

AMENDED IN SENATE AUGUST 20, 2014

AMENDED IN SENATE JULY 1, 2014

AMENDED IN SENATE JUNE 4, 2014

AMENDED IN ASSEMBLY MAY 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1678

**Introduced by Assembly Member Gordon
(Principal coauthor: Assembly Member Dickinson)
(Coauthors: Assembly Members Fong and Ting)**

February 12, 2014

An act to amend Sections 8281, 8282, 8283, 8284, 8285, and 8286 of, and to amend the heading of Article 5 (commencing with Section 8281) of Chapter 7 of Division 4 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL’S DIGEST

AB 1678, as amended, Gordon. Women, minority, disabled veteran, and LGBT business enterprise procurement.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical, gas, water, and telephone corporations. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature.

Existing law directs the commission to require every electrical, gas, water, wireless telecommunications service provider, and telephone corporation with annual gross revenues exceeding \$25,000,000, and their regulated subsidiaries and affiliates, to implement a program

developed by the commission to encourage, recruit, and utilize minority-, women-, and disabled veteran-owned business enterprises, as defined, in the procurement of contracts from those corporations or from their regulated subsidiaries and affiliates, and to require the reporting of certain information. The commission, by its rulemaking authority, has adopted General Order 156, applicable to certain electrical, gas, and telephone corporations, to effectuate these requirements. Existing law includes the declaration by the Legislature that each electrical, gas, water, mobile telephony service provider, and telephone corporation that is not required to submit a plan, and each cable television corporation and direct broadcast satellite provider, is encouraged to voluntarily adopt a plan for increasing women, minority, and disabled veteran business enterprise procurement in all categories. Existing law requires the commission, by rule or order, to adopt criteria for verifying and determining eligibility of women and minority business enterprises for procurement contracts. Existing law requires the commission to provide to the Legislature a specified report on the progress of activities undertaken by certain entities in the implementation of women, minority, and disabled business enterprise development programs. Existing law requires the commission to recommend a program and legislation for carrying out the policy of aiding the interests of women, minority, and disabled veteran business enterprises.

This bill would extend these provisions to LGBT business enterprises, as defined. In initially adopting criteria for verifying and determining the eligibility of LGBT business enterprises for procurement contracts, the bill would require the commission to adopt the ~~certification standards~~ *LGBT status qualifiers* created by the National Gay and Lesbian Chamber of Commerce. The bill would authorize the commission to update the ~~certification standards~~ *LGBT status qualifiers* as appropriate.

(2) This bill would incorporate additional changes in Section 8282 of the Public Utilities Code, proposed by AB 2760, to be operative only if AB 2760 and this bill are chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

(2)

(3) Under existing law, a violation of any provision of any rules or orders of the commission is a crime. In addition, any person or corporation who falsely represents a business as a women, minority, or disabled veteran business enterprise for the purposes of the program discussed above is subject to criminal penalties.

This bill would also subject any person or corporation who falsely represents a business as an LGBT business enterprise for the purposes of the program discussed above to criminal penalties. Because a violation of the requirements of the bill would be a crime under those provisions, this bill would impose a state-mandated local program.

(3)

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 5 (commencing with
2 Section 8281) of Chapter 7 of Division 4 of the Public Utilities
3 Code is amended to read:

4

5 Article 5. Women, Minority, Disabled Veteran, and LGBT
6 Business Enterprises
7

8

9 SEC. 2. Section 8281 of the Public Utilities Code is amended
10 to read:

11 8281. (a) The Legislature hereby finds and declares that the
12 essence of the American economic system of private enterprise is
13 free, open, and transparent competition. Only through free, open,
14 and transparent competition can free markets, reasonable and just
15 prices, free entry into business, and opportunities for the expression
16 and growth of personal initiative and individual judgment be
17 ensured. The preservation and expansion of that competition are
18 basic to the economic well-being of this state and that well-being
19 cannot be realized unless the actual and potential capacity of
20 women, minority, disabled veteran, and LGBT business enterprises
21 is encouraged and developed. Therefore, it is the declared policy
22 of the state to aid the interests of women, minority, disabled
23 veteran, and LGBT business enterprises in order to preserve
24 reasonable and just prices and a free competitive enterprise, to
ensure that a fair proportion of the total purchases and contracts

1 or subcontracts for commodities, supplies, technology, property,
2 and services for regulated public utilities, including, but not limited
3 to, renewable energy, wireless telecommunications, broadband,
4 smart grid, and rail projects, are awarded to women, minority,
5 disabled veteran, and LGBT business enterprises, and to maintain
6 and strengthen the overall economy of the state.

7 (b) (1) The Legislature finds all of the following:

8 (A) The opportunity for full participation in our free enterprise
9 system by women, minority, disabled veteran, and LGBT business
10 enterprises is essential if this state is to attain social and economic
11 equality for those businesses and improve the functioning of the
12 state economy.

13 (B) Public agencies and some regulated utilities that have
14 established short- and long-range women, minority, disabled
15 veteran, and LGBT business enterprise goals are awarding 30
16 percent or more of their contracts to these business enterprises.

17 (C) Women, minority, disabled veteran, and LGBT business
18 enterprises have traditionally received less than a proportionate
19 share of regulated public utility procurement contracts, especially
20 in renewable energy, wireless telecommunications, broadband,
21 smart grid, and rail projects.

22 (D) It is in the state's interest to expeditiously improve the
23 economically disadvantaged position of women, minority, disabled
24 veteran, and LGBT business enterprises.

25 (E) The position of these businesses can be substantially
26 improved by providing long-range substantial goals for
27 procurement by regulated public utilities of technology, equipment,
28 supplies, services, materials, and construction work, especially in
29 renewable energy, wireless telecommunications, broadband, smart
30 grid, and rail projects, from women, minority, disabled veteran,
31 and LGBT businesses.

32 (F) That procurement also benefits the regulated public utilities
33 and consumers of the state by encouraging the expansion of the
34 number of suppliers for procurements, thereby encouraging
35 competition among the suppliers and promoting economic
36 efficiency in the process.

37 (G) That the long-term economic viability of this state depends
38 substantially upon the ability of renewable energy, wireless
39 telecommunications, broadband, smart grid, and rail projects to

1 incorporate women, minority, disabled veteran, and LGBT
2 businesses into those projects.

3 (2) It is the purpose of this article to do all of the following:

4 (A) Encourage greater economic opportunity for women,
5 minority, disabled veteran, and LGBT business enterprises.

6 (B) Promote competition among regulated public utility
7 suppliers in order to enhance economic efficiency in the
8 procurement of electrical, gas, water, wireless telecommunications
9 service provider, and telephone corporation contracts and contracts
10 of their commission-regulated subsidiaries and affiliates.

11 (C) Clarify and expand the program for the procurement by
12 regulated public utilities of technology, equipment, supplies,
13 services, materials, and construction work from women, minority,
14 disabled veteran, and LGBT business enterprises.

15 SEC. 3. Section 8282 of the Public Utilities Code is amended
16 to read:

17 8282. For the purposes of this article, the following definitions
18 apply:

19 (a) “Women business enterprise” means a business enterprise
20 that is at least 51 percent owned by a woman or women; or, in the
21 case of any publicly owned business, at least 51 percent of the
22 stock of which is owned by one or more women; and whose
23 management and daily business operations are controlled by one
24 or more of those individuals.

25 (b) “Minority business enterprise” means a business enterprise
26 that is at least 51 percent owned by a minority group or groups;
27 or, in the case of any publicly owned business, at least 51 percent
28 of the stock of which is owned by one or more minority groups,
29 and whose management and daily business operations are
30 controlled by one or more of those individuals. The contracting
31 utility shall presume that minority includes African Americans,
32 Hispanic Americans, Native Americans, and Asian Pacific
33 Americans.

34 (c) “Disabled veteran business enterprise” has the same meaning
35 as defined in Section 999 of the Military and Veterans Code.

36 (d) “LGBT business enterprise” means a business enterprise
37 that is at least 51 percent owned by a lesbian, gay, bisexual, or
38 transgender person or persons; or, in the case of any publicly owned
39 business, at least 51 percent of the stock of which is owned by one
40 or more lesbian, gay, bisexual, or transgender persons; and whose

1 management and daily business operations are controlled by one
2 or more of those individuals.

3 (e) “Control” means exercising the power to make policy
4 decisions.

5 (f) To “operate” means to be actively involved in the day-to-day
6 management. It is not enough to merely be an officer or director.

7 *SEC. 3.5. Section 8282 of the Public Utilities Code is amended*
8 *to read:*

9 8282. For the purposes of this article, the following definitions
10 apply:

11 (a) “Women business enterprise” means a business enterprise
12 that is at least 51 percent owned by a woman or women; or, in the
13 case of any publicly owned business, at least 51 percent of the
14 stock of which is owned by one or more women; and whose
15 management and daily business operations are controlled by one
16 or more of those individuals.

17 (b) “Minority business enterprise” means a business enterprise
18 that is at least 51 percent owned by a minority group or groups;
19 or, in the case of any publicly owned business, at least 51 percent
20 of the stock of which is owned by one or more minority groups,
21 and whose management and daily business operations are
22 controlled by one or more of those individuals. The contracting
23 utility shall presume that minority includes ~~Black African~~
24 Americans, Hispanic Americans, Native Americans, and Asian
25 Pacific Americans.

26 (c) “Disabled veteran business enterprise” has the same meaning
27 as defined in ~~subdivision (g)~~ of Section 999 of the Military and
28 Veterans Code.

29 (d) *“LGBT business enterprise” means a business enterprise*
30 *that is at least 51 percent owned by a lesbian, gay, bisexual, or*
31 *transgender person or persons; or, in the case of any publicly*
32 *owned business, at least 51 percent of the stock of which is owned*
33 *by one or more lesbian, gay, bisexual, or transgender persons;*
34 *and whose management and daily business operations are*
35 *controlled by one or more of those individuals.*

36 ~~(d)~~

37 (e) “Control” means exercising the power to make policy
38 decisions.

39 ~~(e) “Operate” means being~~

1 (f) To “operate” means to be actively involved in the day-to-day
2 ~~management and not merely officers or directors. management. It~~
3 ~~is not enough to merely be an officer or director.~~

4 (g) “Renewable energy project” means a project for the
5 development and operation of an eligible renewable energy
6 resource meeting the requirements of the California Renewables
7 Portfolio Standard Program (Article 16 (commencing with Section
8 399.11) of Chapter 2.3 of Part 1 of Division 1).

9 SEC. 4. Section 8283 of the Public Utilities Code is amended
10 to read:

11 8283. (a) The commission shall require each electrical, gas,
12 water, wireless telecommunications service provider, and telephone
13 corporation with gross annual revenues exceeding twenty-five
14 million dollars (\$25,000,000) and their commission-regulated
15 subsidiaries and affiliates, to submit annually, a detailed and
16 verifiable plan for increasing procurement from women, minority,
17 disabled veteran, and LGBT business enterprises in all categories,
18 including, but not limited to, renewable energy, wireless
19 telecommunications, broadband, smart grid, and rail projects.

20 (b) These annual plans shall include short- and long-term goals
21 and timetables, but not quotas, and shall include methods for
22 encouraging both prime contractors and grantees to engage women,
23 minority, disabled veteran, and LGBT business enterprises in
24 subcontracts in all categories that provide subcontracting
25 opportunities, including, but not limited to, renewable energy,
26 wireless telecommunications, broadband, smart grid, and rail
27 projects.

28 (c) The commission shall establish guidelines for all electrical,
29 gas, water, wireless telecommunications service providers, and
30 telephone corporations with gross annual revenues exceeding
31 twenty-five million dollars (\$25,000,000) and their
32 commission-regulated subsidiaries and affiliates, to be utilized in
33 establishing programs pursuant to this article.

34 (d) Every electrical, gas, water, wireless telecommunications
35 service provider, and telephone corporation with gross annual
36 revenues exceeding twenty-five million dollars (\$25,000,000) shall
37 furnish an annual report to the commission regarding the
38 implementation of programs established pursuant to this article in
39 a form that the commission shall require, and at the time that the
40 commission shall annually designate. The report shall include the

1 information about LGBT business enterprises beginning with the
2 2016 report.

3 (e) (1) The commission shall provide a report to the Legislature
4 on September 1 of each year, on the progress of activities
5 undertaken by each electrical, gas, water, wireless
6 telecommunications service provider, and telephone corporation
7 with gross annual revenues exceeding twenty-five million dollars
8 (\$25,000,000) pursuant to this article in the implementation of
9 women, minority, disabled veteran, and LGBT business enterprise
10 development programs. The report shall include information about
11 which procurements are made with women, minority, disabled
12 veteran, and LGBT business enterprises with at least a majority
13 of the enterprise's workforce in California, to the extent that
14 information is readily accessible. The commission shall recommend
15 a program for carrying out the policy declared in this article,
16 together with recommendations for legislation that it deems
17 necessary or desirable to further that policy. The commission shall
18 make the report available on its Internet Web site.

19 (2) In regard to disabled veteran business enterprises, the
20 commission shall ensure that the programs and legislation
21 recommended pursuant to paragraph (1) are consistent with the
22 disabled veteran business enterprise certification eligibility
23 requirements imposed by the Department of General Services and
24 that the recommendations include only those disabled veteran
25 business enterprises certified by the Department of General
26 Services.

27 (3) The commission shall include the information about LGBT
28 business enterprises required by paragraph (1) beginning with the
29 report due on September 1, 2016.

30 (f) (1) The Legislature declares that each electrical, gas, water,
31 mobile telephony service provider, and telephone corporation that
32 is not required to submit a plan pursuant to subdivision (a) is
33 encouraged to voluntarily adopt a plan for increasing women,
34 minority, disabled veteran, and LGBT business enterprise
35 procurement in all categories.

36 (2) The Legislature declares that each cable television
37 corporation and direct broadcast satellite provider is encouraged
38 to voluntarily adopt a plan for increasing women, minority,
39 disabled veteran, and LGBT business enterprise procurement and

1 to voluntarily report activity in this area to the Legislature on an
2 annual basis.

3 SEC. 5. Section 8284 of the Public Utilities Code is amended
4 to read:

5 8284. (a) (1) The commission shall, by rule or order, adopt
6 criteria for verifying and determining the eligibility of women,
7 minority, and LGBT business enterprises for procurement
8 contracts.

9 (2) The commission shall adopt the Department of General
10 Services' disabled veteran business enterprise certification
11 eligibility requirements for verifying and determining the eligibility
12 of disabled veteran business enterprises for procurement contracts,
13 and shall not deem eligible those disabled veteran business
14 enterprises that are not certified by the Department of General
15 Services.

16 (3) In initially adopting criteria for verifying and determining
17 the eligibility of LGBT business enterprises for procurement
18 contracts pursuant to paragraph (1), the commission shall adopt
19 ~~the certification standards~~ *LGBT status qualifiers* created by the
20 National Gay and Lesbian Chamber of Commerce. The commission
21 may update these ~~standards~~ *LGBT status qualifiers* as appropriate.

22 (b) The commission shall develop, and require every electrical,
23 gas, water, wireless telecommunications service provider, and
24 telephone corporation with gross annual revenues exceeding
25 twenty-five million dollars (\$25,000,000) and their
26 commission-regulated subsidiaries and affiliates to implement, an
27 outreach program to inform and recruit women, minority, disabled
28 veteran, and LGBT business enterprises to apply for procurement
29 contracts under this article.

30 SEC. 6. Section 8285 of the Public Utilities Code is amended
31 to read:

32 8285. (a) Any person or corporation, through its directors,
33 officers, or agents, which falsely represents a business as a women,
34 minority, or LGBT business enterprise in the procurement of, or
35 the attempt to procure, contracts from an electrical, gas, water,
36 wireless telecommunications service provider, or telephone
37 corporation with gross annual revenues exceeding twenty-five
38 million dollars (\$25,000,000), or a commission-regulated
39 subsidiary or affiliate subject to this article, shall be punished by
40 a fine of not more than five thousand dollars (\$5,000), by

1 imprisonment in a county jail for not more than one year or in the
2 state prison, or by both that fine and imprisonment. In the case of
3 a corporation, the fine or imprisonment, or both, shall be imposed
4 on every director, officer, or agent responsible for the false
5 statements.

6 (b) Any person or corporation, through its directors, officers,
7 or agents, which falsely represents a business as a disabled veteran
8 business enterprise in the procurement of, or the attempt to procure,
9 contracts from an electrical, gas, water, wireless
10 telecommunications service provider, or telephone corporation
11 with gross annual revenues exceeding twenty-five million dollars
12 (\$25,000,000), or a commission-regulated subsidiary or affiliate
13 subject to this article, shall be punished according to the penalties
14 established pursuant to subdivision (b) of Section 999.9 of the
15 Military and Veterans Code. In the case of a corporation, the fine
16 or imprisonment, or both, shall be imposed on every director,
17 officer, or agent responsible for the false statements.

18 SEC. 7. Section 8286 of the Public Utilities Code is amended
19 to read:

20 8286. (a) In order to facilitate the participation of
21 women-owned businesses, minority-owned businesses, disabled
22 veteran-owned businesses, and LGBT-owned businesses and small
23 businesses in contract procurement, any corporation subject to this
24 article may consider the following measures to include those
25 businesses in all phases of their contracting:

26 (1) Timely or progressive payments to those businesses.

27 (2) An amendment of the performance bond requirements so
28 that bond requirements of electrical, gas, and telephone
29 corporations do not prohibitively burden those businesses from
30 procuring the corporation's business.

31 (3) The provision of assistance to those businesses by securing
32 contract payments to those businesses with letters of credit,
33 negotiable securities, or other financing arrangements or measures.

34 (b) This section does not restrict a corporation's ability to require
35 a bond.

36 SEC. 8. *Section 3.5 of this bill incorporates amendments to*
37 *Section 8282 of the Public Utilities Code proposed by both this*
38 *bill and Assembly Bill 2760. It shall only become operative if (1)*
39 *both bills are enacted and become effective on or before January*
40 *1, 2015, (2) each bill amends Section 8282 of the Public Utilities*

1 *Code, and (3) this bill is enacted after Assembly Bill 2760, in which*
2 *case Section 3 of this bill shall not become operative.*

3 ~~SEC. 8.~~

4 *SEC. 9.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.